IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

CRL.A.No. 568 of 2002(C)

CRA.336/2000 of ADDL. SESSIONS COURT, ALAPPUZHA
CC.332/1999 of JDUL.MAGISTRATE OF FIRST CLASS, RAMANKARY

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APPELLANT/RESPONDENT/COMPLAINANT

A.K.NARAYANA KAIMAL, GOVINDAVILASAM
VEEDU, THEKKEKARA P.O., MONKOMBU, ALAPPUZHA.

BY ADV. SRI.S.K.MURALEEDHARA KAIMAL

RESPONDENTS/APPELLANT/ACCUSED

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1. P.KRISHNAN NAIR, S/O.PADMANABHA PILLAI,
MAPPOTTIL VEEDU, CHATHURTHIYAKARI P.O.,
MONKOMBU, ALAPPUZHA.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.P.RAVEENDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

Crl.A. No.568 of 2002

Dated this the 15th day of March, 2007

JUDGMENT

This appeal is filed against the judgment of the lower appellate court in Crl. Appeal No.336/2000 on the file of Additional Sessions Judge, Alappuzha. By the impugned judgment, the appellate court set aside the judgment of the trial court in C.C. No. 332/1999 on the file of the Judicial Magistrate of First Class, Ramankary. The case of the appellant/complainant before the trial court was that 1st respondent/accused had borrowed an amount of Rs.70,000/- from the appellant and for repaying the above amount, the 1st respondent had issued Ext.P1 cheque dated 3-3-1999. When the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund to honour the cheque. After complying the statutory provisions on receipt of dishonour, the appellant/complainant filed the complaint before the trial court. On the side of the prosecution, the appellant himself was examined as PW1. PW2-the Bank Manager was also examined to prove the dishonour of the cheque, Exts.P1 to P6 were marked. On closing the evidence of the appellant, the 1st respondent was questioned under Section 313 Cr.P.C. On denying the allegation in the complaint the 1st respondent had stated that he had borrowed an amount of Rs.37,000/- from the appellant and out of which, Rs.27,000/- had been already paid. Further, the 1st respondent had stated that the appellant had sent Ext.D1 and

D2 letters to his son, who was working abroad, requesting to him to pay the amount borrowed by the 1st respondent. However, relying on the evidence adduced by the complainant the trial court found that the complainant/appellant succeeded in proving that the 1st respondent had received an amount of Rs.70,000/- and had issued Ext.P1 cheque which was dishonoured subsequently by the Bank and hence, the 1st respondent committed an offence under Section 138 of the Negotiable Instruments Act and he was convicted thereunder and sentenced to pay fine of Rs.30,000/- to the appellant/complainant and also to execute a bond for Rs.10,000/- under Section 4 of the Probation of Offenders Act for a period of one year. Trial court also ordered that fine amount shall be paid to the complainant as compensation. Against the above judgment of the trial court, 1st respondent filed the Crl. A. No.336/2000 before the lower appellate court and on hearing the appeal the lower appellate court set aside the judgment of the trial court and held that the appellant/complainant failed to prove transaction between the appellant and the 1st respondent which lead to the issuance of the Ext.P1 cheque. At the same time, the lower appellate court also found that the 1st respondent had only received an amount of Rs.37,000/- from the appellant out of which, Rs.27,000/- had been already paid. Against the appellate Court judgment, this appeal is filed .

2. The appeal was admitted and notice was ordered to the 1st respondent and notice was served on him. There is no appearance for and on behalf of the 1st respondent. Hence, this court heard the learned counsel appearing for the appellant who submits that the finding entered by the lower appellate court and the reasoning adopted by the lower appellate

court are not based on the evidence and the lower appellate court misread the entire evidence adduced by the appellant.

3. The trial court after considering the entire evidence adduced by the complainant, found that Ext.P1 cheque was issued by the 1st respondent to the appellant in discharge of the amount borrowed from the appellant. The trial court found that the evidence adduced by the appellant would show that there was financial transaction between the appellant and the 1st respondent and also with other members of the family of the 1st respondent including the son of the 1st respondent. The trial court found that the case suggested by the 1st respondent that Ext.P1 was issued for the amount received by 1st respondent and the case set up by the 1st respondent relying on Ext. D1 and D2, two letters alleged to have been sent by appellant to the son of the 1st respondent, would not prove that there was no transaction between the appellant and the 1st respondent. It is to be noted that the lower appellate court strained much to arrive a conclusion that the appellant had not proved the financial transaction between the appellant and the 1st respondent, which lead to the issuance of Ext.P1 cheque and hence, the finding of the lower appellate court that the appellant failed to prove the consideration for which Ext.P1 has been passed by the 1st respondent is not based on any evidence. In the above circumstances, the judgment of the lower appellate court is not sustainable.

4. Further, it could be seen that the finding of the lower appellate court that the debt which lead to the issuance of Ext. P1 might have been barred by limitation was not an issue to be decided by the appellate court as there was no evidence to show that the amount borrowed by the

1st respondent from the appellant was not same as that of the amount as alleged to have been requested to be paid back by the son of the 1st respondent or the same was barred by limitation. The specific case set up by the appellant in the complaint and proved before the court is that the 1st respondent had borrowed money not for the use of his son or other members of his family but for his own business. In the above circumstances, the finding of the lower appellate court that the debt might have been barred by limitation and it would not create any liability under Section 138 has no legal standing.

3. In the above circumstance, judgment of the lower appellate court in Crl. A. No.336/2000 is set aside confirming the judgment in C.C. No.332/1999 on the file of the Judicial Magistrate of First Class, Ramankary.

K.THANKAPPAN, JUDGE

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